

**CONSTRUCTION BOARD OF APPEALS
MEETING MINUTES
SEPTEMBER 29, 2003**

Board Members Present: Ron Clark, John Glover, Dave Fisher, Ed Noonan,

Members Absent: Bruce Bermel, Quentin Collins

Staff Present: Dave Velde, Steve Kirchman, Bev Haw

Others Present: Mrs. Judy Chirpich - 5601 McGuire Rd, Mr. Gerald Robinson -
5600 70th St W

I. APPROVAL OF THE MINUTES:

Chairman Glover stated he did not receive 9/3/03 minutes.

Mr. Kirchman said that the minutes were mailed, but will be remailed and the Board can make any necessary changes.

II. OLD BUSINESS:

**CBA03-02: - 5602 McGuire Rd. - Edina City Code, Section 450.06
Subd 11, prohibiting above ground
swimming pools**

Chairman Glover confirmed receipt of the staff report by Board members and Chirpichs and opened the issue for discussion.

Judy Chirpich brought up the concern about the difficulty of rescue from this pool. She had taken pictures of herself entering and exiting the pool but her printer did not work so she was unable to bring them. She stated that this is a 5000-gallon toddler pool and in her opinion it is a very easy pool to get in and out of. Mrs. Chirpich also brought up the memo she received from the Fire Chief stating they needed a large stable area to work from, but it doesn't state the size of the pool. She again stressed how easy the pool is to get in and out of, with only a depth of 25". Mrs. Chirpich then commented on the question of the rushing water when emptied. She mentioned she and her neighbor experienced it when they started emptying it, adding that the rush is definitely a push but not enough to push an adult over. The water "rush" did not push either one of them over.

Boardmember Noonan questioned the depth of the pool, restrictions on the height, what determines it to be a pool, wading pool vs. swimming pool, etc. He added he has some concerns with no type of boundary or guidance from the City on this. Boardmember Noonan questioned if this pool requires a permit. He pointed out no permit was issued for

this pool, Chirpichs did not understand if they needed a permit, and the code requirements should be more clear. Boardmember Noonan suggested using the *About Town* or other means of technology to address some of these issues to head them off. Boardmember Noonan then brought up fencing safety on both above and in ground pools and the ability for anyone walk up to this pool. He also questioned the deck requirement around the pool. Is this a good thing or bad thing? We do not allow them to raise the grade to make up the deck surface. He brought up his experience as a paramedic and concerns on rescues, other than drowning, were head and neck injuries. Because of this, more equipment is brought into a pool and the staging area is a little more important with backboards etc, to adequately get people safely out of the pool. This is a different application, there is no diving into the pool, but such injuries could happen even in a shallow body of water. He talked to Marty (Fire Chief) about the effect of water rushing out of the pool on rescuers who will be burdened with gear and unknowledgeable of what they are getting into till they get to the scene. He questioned how health issues would be regulated on a 5,000-gallon pool with no required chemical treatment.

Judy Chirpich commented that she uses chemicals to keep the pool water clean.

Boardmember Noonan questioned the size of the body of water and whether it would be harder to maintain then a wading pool, and asked if that should be looked at.

Chairman Glover mentioned that before he received the staff report he was more accepting of the pool. The sanitation aspect is not one that is high on priorities because one can have the system in any pool and not put chemicals in or not operate it properly. Chairman Glover said his concern is the lack of an unobstructed deck around the pool and the lack of fencing. He pointed out if the variance for this pool - which is 30" deep and fairly accessible to an adult person for rescue - is approved, then other above ground pools that are higher will have to be addressed. Until we have some model codes in effect and some experience he will not support this appeal.

Boardmember Clark mentioned that his biggest concern is safety, or the lack of it and the City does have an ordinance in place regulating pools. This type of above ground pool is a new twist for the City, and if the board approves this pool the board may not be in keeping with the ordinance. Boardmember Clark said he personally has concerns over this and has concerns especially for the City of Edina. The safety issue is a huge concern for him and he can't see how he can support the variance request.

Boardmember Fisher stated he also agrees this type of pool presents a safety issue. If this pool is approved, where does the City draw the line? He added he agrees with other comments that this poses problems, and in his opinion the variance would be tough to support.

Chairman Glover asked if there is any further discussion

Boardmember Noonan asked if there is any conditional use that could be considered here.

Mr. Kirchman stated this an issue that the City Council may want to look into and see if they are willing to consider it. He added he doesn't believe a conditional use permit can be implemented here, but the Board can make recommendations to the Council.

Boardmember Noonan mentioned since the pool is already down for the season, it appears the homeowner has time to appeal our decision to the Council.

Chairman Glover asked for a motion on this variance request

Boardmember Fisher motioned for denial.

Boardmember Clark seconded the motion.

All voted aye; motion to deny variance passed.

Asked if there was any recommendation that can be made at this time that this be forwarded on and who has to actually make the request to the city for an appeal to council

Mr. Kirchman also stated that staff has already made their recommendations based on our research, but if the Construction Board of Appeals would like to pass on recommendations to Council that needs to be included in the motion.

Chairman Glover asked if the insurance company had been spoken to.

Mr. Velde said that he called an adjuster, and they said they didn't have any experience on the soft-sided pools.

Boardmember Clark asked if there were a kind of set up standards either by the manufacturers or the distributors or the insurance industry that we might want to borrow to incorporate that language into this ordinance. That way we would have a clearer set of standards

Mr. Velde said there are standards for above ground swimming pools that are established by the National Swimming Pool Institute. That is something that could be incorporated into an ordinance if we are suggesting allowing above ground swimming pools in the City. There are no standards for the smaller soft-sided portable swimming pool.

Boardmember Clark mentioned at the last meeting they discussed considering that the Council look into the possibility of allowing above ground pools. It was acknowledged at that time that the Council would have to revisit this issue because this board does not have the authority to make that decision. Boardmember Clark noted the board is aware the City looked into permitting above ground pools in the past and the Council decided at that time to prohibit them.

Mr. Kirchman asked that even in the absence of an appeal you could direct us to inquire to Council whether they would be willing to consider any changes in the ordinance

Gerald Robinson asked for a clarification from Mr. Velde why there are no standards for soft-sided pools by the National Swimming Pool Institute. Are those standards for water quality, or does cover other safety issues, for example the decking, ladders etc

Mr. Velde explained that it covers everything from filtration equipment, design, whether it has a diving pool or not, recirculation system, filters, chlorinators, pumps and includes standards for water quality.

Mr. Robinson pointed out that it seems to just cover the mechanicals and water quality but not the safety, or rescue type of issues, like the decking, fencing, etc.

Mr. Velde said that there is a section on decking and fencing, they recommend those, they are not part of the standards but recommendations for communities to follow.

Chairman Glover asked how to direct staff to go to council with this recommendation so we are not left in the same situation as when we first started this. There was discussion with the council about 15-20 years ago and there is no record as to why it was turned down. Need to get out concerns of the issue of safety around the pool to Council.

Mr. Velde suggested a memo from the chair to the City Council to raise that issue. Staff could draft a memo for Chairman Glover to sign and pass it on to City Council and they could ask for more information or take it from there.

Boardmember Noonan would like to expand this discussion from pools to include play structures, trampolines, etc.

Mr. Robinson stated that, in his opinion, the Construction Board of Appeals has the ability to go into depth if they chose to do an initial draft of a code. To go to the City Council and say, here are our thoughts on the issue and some initial background research, at least give them a little firmer starting position.

Mr. Kirchman explained that the Construction Board of Appeals actually is required by the State to be in place by the State Building Codes and Standard Division and its primary purpose is to make decisions on the building code, not on city ordinances. Typically, a Construction Board of Appeals would not be dealing with city ordinances at all; they would be dealing with state codes. But this is the way we are set up here. I would prefer that since we are working with a city ordinance that we can't change anyway that we let Council look at it and direct staff or the Board. They may send it back to us to make some recommendations for an ordinance. If so, the Board will have a clear direction and directive.

Chairman Glover asked if any other comments

Steve Kirchman confirmed that the staff will draw up a memo for the Chair to go to Council

II. CBA03-02: 6301 Knoll Dr. S. – Edina City Code, Section 450.06, Subd 8, regulating pool ladders

Chairman Glover next item on the agenda is in regards to the swimming pool ladder at the Brockway residence and it clearly falls under jurisdiction. Asked if everyone read information put together by staff. Asked for discussion.

Boardmember Noonan asked who signed the permit when it was picked up, was it the homeowner or through a pool company?

Mr. Velde answered that it was a pool company and they were aware that a ladder was required.

Boardmember Noonan asked if the signature line of the permit application “I will comply with all,” part of the language?

Mr. Kirchman answered yes and it was marked on the plans.

Boardmember Fisher asked why is he appealing this?

Mr. Velde answered that Mr. Brockway doesn't want the ladder. He's got a swim-out in the deep end that he uses to get in and out of the pool and doesn't want the ladder obstructing the view of the pool, because the ladder has a handrail.

Boardmember Fisher mentioned that they knew this before he built the pool that a ladder was required.

Mr. Velde said that he doesn't know if the homeowner knew but the contractor did, and we believe that the reason the ladder with the hand rail is necessary is if somebody is in trouble in the water they at least have something to grab onto to pull themselves out.

Boardmember Fisher is surprised why this is even here, suggested to put the ladder in.

Boardmember Noonan asked Mr. Velde if he has seen the pool

Mr. Velde said no that Solvei Wilmot has, she was out on the final inspection and discovered the ladder missing.

Boardmember Noonan asked if there was any hardware embedded into the construction at all that would accept a ladder

Mr. Velde said that that was not even there

Boardmembers asked for swim-out details.

Mr. Velde explained that on the deep end where the water is 6' or deeper a ledge is built in the corner of the pool just below water level to enable a swimmer to swim over there and sit on the and/or get out of the pool. These swim-outs are not permitted. City Code requires a ladder with handrails. A ladder can be installed without obstructing an existing swim-out.

Boardmember Noonan asked if everything else meet code.

Mr. Velde answered yes – also mentioned that there are about 20 inground swimming pools installed each year. We have well over 1000 pools in the City and it is not unusual to see a swim out but it is unusual to see a swim-out without a ladder.

Boardmember Noonan commented on since the City doesn't do yearly inspections of these pools that these requirements are observed only at the final.

Boardmember Fisher made a motion to deny the variance request.

Chairman Glover seconded.

All voted aye. The motion to deny the variance passed.

Chairman Glover asked for any other discussion for any upcoming items.

Chairman Glover asked for a motion to adjourn

Boardmember Fisher made a motion, Boardmember Noonan seconded, all voted aye. The meeting was adjourned at 8:00AM.